IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WP(C).No. 4338 of 2007(N)

PETITIONER:

PONNAMMA RAPHAEL,
W/O. 1329229 LATE EX.SPR RAPHAEL,KONANKODATH HOUSE (JISHA BHAVAN), EDAPPALLY NORTH, COCHIN-24.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:
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1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,MINISTRY OF DEFENCE, NEW DELHI.

2. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION), ALLAHABAD.

3. OFFICER IN-CHARGE,
MADRAS ENGINEER GROUP, SIVANCHETTY GARDEN P.O., BANGALORE-560 042.

BY ADV. SRI.T.P.SAJID, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 4338/2007 N

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE LETTER NO. G1/C/XXIII/PGO/NAVY/2006 DT. 30/3/2006 BY THE R2 TO THE PETITIONER.

EXT.P2. COPY OF THE REPRESENTATION DT. 10/10/2006 BY THE PETITIONER TO THE R2.

EXT.P3. COPY OF THE POSTAL RECEIPT DT. 10/101/2006.

EXT.P4. COPY OF THE EXTRACT FROM ARMY PENSION REGULATIONS (PAGE 65).

EXT.P5. COPY OF THE LETTER DT. 11/5/05 BY CENTRAL ORGANISATION OF ECHS TO THE PETITIONER.

EXT.P6. COPY OF THE JUDGMENT DT. 28/6/2005 IN WPC NO. 15013/2004 ON THE FILE OF HIGH COURT OF KERALA.

EXT.P7. COPY OF THE PPO NO. 129/2006 BY THE R2.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE RULE 219 OF PENSION REGULATIONS FOR THE ARMY PART-1 (1961).

EXT.R3B. COPY OF THE RECORD OFFICE MADRAS ENGINEER GROUP LETTER NO. 1329229/PEN(F)/12/F DT. 17/08/2005.

EXT.R3C. COPY OF THE RULE 222 OF PENSION REGULATIONS FOR THE ARMY PART-1 (1961)

EXT.R3D. COPY OF THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS) ALLAHABAD LETTER NO. G4/VIII/MEG(B)/LC/07, DT. 24/5/2007.

True copy

tga

V.GIRI, J.

W.P.(C).No.4338 of 2007 N

Dated this the 3rd day of October, 2007.

JUDGMENT

The petitioner's husband rendered military service from 21.11.1962 to 1.9.1978, on which date he was discharged from service. He was re-employed as civilian in INS, Garuda with effect from 3.7.1982 and continued therein till 30.11.1996, the date of superannuation. On retirement, the petitioner's husband was receiving pension attributable to the service in INS Garuda and defence pension attributable to his earlier military service. The petitioner's husband died on 20.2.2002.

2. The petitioner, the widow, is receiving family pension attributable to her husband's service in INS Garuda for the period from 3.7.1982 to 30.11.1996. The petitioner claims family pension attributable to the military service also. Learned counsel for the petitioner Mr.Ravi Sankar concedes that the petitioner would not be entitled to two family pensions at the same time, but points out that in cases where

the widow is not remarried and is not otherwise employed also in Government service, she would be entitled to defence pension, but abated by the civil family pension.

3. The respondents in the counter affidavit filed by them have essentially taken up a contention that Regulation 222 of the Defence Pension Regulations regulates the special family pension and not ordinary family pension. Learned counsel for the petitioner produced a copy of the Pension Regulations of the Army as is available in this court, which shows that Regulation 222 refers to ordinary family pension and not special family pension.

4. In Ext.P1 the petitioner's claim for receiving family pension attributable to the petitioner's husband's earlier military service, over and above the family pension which the petitioner is receiving attributable to the petitioner's husband's service as a civilian in INS Garuda was

considered. A representation was thereafter filed by the petitioner in terms of Regulation 222 of the Pension Regulations vide Ext.P2.

5. I heard learned counsel for the petitioner as also the Additional Central Government Standing Counsel. In the facts and circumstances of the case, I direct the 2nd respondent to take a decision on Ext.P2 in terms of the Regulations which are actually applicable to the case of ordinary family pension, after hearing the petitioner or her authorised representative within two months from the date of receipt of a copy of this judgment.

6. Petitioner has a supplemental claim of eligibility for inclusion in Ex-servicemen Contributory Health Scheme. The respondents have mentioned in Ext.P1 that if the petitioner wants to avail of the said scheme, it is open to her to avail of that facility. The said contention of the petitioner

is left open and the petitioner is free to pursue other appropriate remedies in relation to the same.

7. If the petitioner's claim for ordinary family pension in terms of Regulation 222 is admissible, the amounts that are found due shall also be disbursed to the petitioner within the aforementioned period of two months.

The writ petition is disposed of as above.

Sd/-

(V.GIRI)

JUDGE

sk/

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